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MONTANA LEGISLATIVE HISTORY

Chapter 16 2001

Bill H 115 S _____ Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-11	✓C	Hearing Date(s)	2-1	✓C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	02/15/2001			
(H) Signed by Governor	02/14/2001			
(H) Transmitted to Governor	02/06/2001			
(S) Signed by President	02/06/2001			
(H) Signed by Speaker	02/05/2001			
(C) Sent to Printing	02/05/2001			
(H) Returned from Enrolling	02/05/2001			
(H) Sent to Enrolling	02/05/2001			
(S) Returned to House	02/03/2001			
(S) 3rd Reading Concurred	02/03/2001	42	0	
(S) Scheduled for 3rd Reading	02/03/2001			
(S) 2nd Reading Concurred on Voice Vote	02/02/2001	45	0	
(S) Scheduled for 2nd Reading	02/02/2001			
(S) Committee Report--Bill Concurred	02/01/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred	02/01/2001	9	0	(S) Judiciary
(S) Hearing	02/01/2001			(S) Judiciary
(S) Referred to Committee	01/16/2001			(S) Judiciary
(S) First Reading	01/16/2001			
(H) Transmitted to Senate	01/15/2001			
(H) 3rd Reading Passed	01/15/2001	96	0	
(H) Scheduled for 3rd Reading	01/15/2001			
(H) 2nd Reading Passed	01/13/2001	100	0	
(H) Scheduled for 2nd Reading	01/13/2001			
(H) Committee Report--Bill Passed	01/12/2001			(H) Judiciary
(H) Committee Executive Action--Bill Passed	01/11/2001	20	0	(H) Judiciary
(H) Hearing	01/11/2001			(H) Judiciary
(H) First Reading	01/03/2001			
(H) Referred to Committee	12/28/2000			(H) Judiciary
(C) Introduced Bill Text Available Electronically	12/21/2000			
(H) Introduced	12/21/2000			
(C) Pre-Introduction Letter Sent	12/20/2000			
(C) Pre-Introduction Letter Sent	11/14/2000			
(C) Pre-Introduction Letter Sent	11/13/2000			
(C) Draft in Assembly/Executive Director Review	10/16/2000			
(C) Draft in Final Drafter Review	10/13/2000			
(C) Bill Draft Text Available Electronically	10/10/2000			
(C) Draft in Input/Proofing	09/28/2000			

(C) Draft to Drafter - Edit Review [CAJ]	09/21/2000			
(C) Draft in Edit	09/21/2000			
(C) Draft in Legal Review	09/21/2000			
(C) Draft to Requester for Review	09/21/2000			
(C) Draft Request Received	08/25/2000			

HOUSE BILL NO. 115

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE IMPOSITION OF AN ADDITIONAL SENTENCE FOR OFFENSES COMMITTED WITH A DANGEROUS WEAPON DOES NOT APPLY IF THE USE OF A WEAPON IS AN ELEMENT OF THE UNDERLYING OFFENSE; AND AMENDING SECTION 46-18-221, MCA."

WHEREAS, in State v. Guillaume, 1999 MT 29, 293 Mont. 224, 975 P.2d 312 (1999), the Montana Supreme Court held that as applied to offenses in which the use of a weapon is an element of the offense, the additional sentence for an offense committed with a dangerous weapon violates the double jeopardy provision of Article II, section 25, of the Montana Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-221, MCA, is amended to read:

"**46-18-221. Additional sentence for offenses committed with ~~a~~ dangerous weapon.** (1) A person who has been found guilty of any offense, other than an offense in which the use of a weapon is an element of the offense, and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of ~~such~~ the underlying offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons ~~shall~~ must be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which ~~he~~ the person knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section ~~shall~~ must run consecutively to the sentence provided for the offense."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 11, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 102 - 1-08-01**
HB 196 - 1-08-01

HB 115 - 1-05-01
HB 128 - 1-05-01

Executive Action: **HB 115 - DO PASS 20-0**
HB 156 - POSTPONED

HEARING ON HB 102

Sponsor: Rep. George Golie, HD 44, Great Falls said HB 102 deals directly with condominiums, condominium owners and condominium associations. This Bill is an Act providing that the percentage of undivided interest of each unit owner in a common element may not be altered unless 75% of unit owners agree. This Bill also clarifies a definition of each unit. The legislation also addresses the number of owners needed to change a declaration for a condominium association.

Proponents: Kenneth G. Robison, Great Falls EXHIBIT(juh08a01) and letters he provided to Secretary **EXHIBIT(juh08a02)**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 8.4}

Opponents: None

Questions from Committee Members and Responses: Reps. Noennig, Peterson, Clark, Hurdle, Rice, Wolery to **Rep. Golie and Mr. Robison** for clarification of the Bill and comparison figures concerning other associations.

{Tape : 1; Side : A; Approx. Time Counter : 8.4 - 26.5}

Closing by Sponsor: Rep. Golie closed the Hearing on **HB 102.**

HEARING ON HB 196

Sponsor: Rep. Michelle Lee, HD 26, Livingston said this is an issue of fairness to local government. It is a correction of an unfunded mandate. It states that the Department of Corrections will reimburse the counties back to the date of arrest versus the date of conviction.

Proponents: Dan Gutebier, Park County Commissioner, Justice and Public Safety Committee for Montana Association of Counties (MACO).

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 6.4}

business and equipment tax. Has that tax reduction affected the counties? **Mr. Carpenter** said yes, it has affected the counties. The Sheriff's Department has an increase of $180,000.

Reps. Hurdle, Clancy, Noennig, Mangan, Peterson, Gallus, Shockley to Mr. Carpenter and Mr. Williams for clarification and further explanation.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 7.5}

Closing by Sponsor: Rep. Lee closed the Hearing on HB 196.

{Tape : 2; Side : A; Approx. Time Counter : 7.6 - 25}

HEARING ON HB 115

Sponsor: Rep. Jim Shockley, HD 61 said during the 1999 Session, the Supreme Court made a ruling on statutes relating to weapons. So to simply clarify the statutes there are changes on line 19. "A person found guilty of any offense other than an offense with the use of a weapon while committing a crime, has the benefit of enhancement."

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 2.6}

Proponents: Pam Bucy, Assistant Attorney General

Colleen White, Attorney, Department of Corrections

Opponents: None

Questions from Committee Members and Responses: None

Closing by Sponsor: Rep. Shockley closed the Hearing on HB 115.

HEARING ON HB 128

"An Act creating a Commission on Criminal Statutes Revision; providing for appointments and terms; providing Commission duties; directing the Commission to make regular reports and recommendations to an Interim Committee of the Legislature; providing an appropriation and effective dates."

Sponsor: Rep. Jim Shockley, HD 61 said this is another Bill from the Law, Justice and Indian Affairs. The criminal statutes are important to the jurisdiction of the Law of Justice and Indian Affairs. These statutes occasionally need to be reviewed. There

are 400 misdemeanor statutes scattered throughout the code. They can address such things as the Sentence Review Board, the Parole Board and the judges to make the system function more in sync and more economically. The Bill is drafted quite broadly because there were a lot of people who had an interest in it.

Proponents: None

Opponents: None

Questions from Committee Members and Responses: **Reps. Mangan, Harris, Hurdle, Mangan to Rep. Shockley** for suggestions and clarification. **Rep. Shockley** said it will be between six months and a year before they actually have the systems up and working because they don't want to switch from the old to the new until they are sure they have the new system working properly.

Rep. Gutsche said she would like to suggest, if this Bill passes, that the Commission take a harder line on this than monitoring and recommend what the data base might be.

Rep. Eggers reported to the Committee that tomorrow he has a meeting with the Attorney General regarding two of his Bills, including HB 189, which is also a data collection Bill, and he intends to explore with him not only where they are in the digital world and how they can provide digital input in terms of informational data collection, but how it will affect this Bill as they are similar.

Closing by Sponsor: **Rep. Shockley** closed the Hearing on HB 128.

EXECUTIVE ACTION ON HB 115

Motion/Vote: **REP. SHOCKLEY** moved that **HB 115 DO PASS. Motion carried unanimously. #1**

{Tape : 2; Side : B; Approx. Time Counter : 2.6 - 29.7}

Discussion: **Rep. Shockley** asked **John MacMaster** for clarification concerning Consent Calendar. **Mr. MacMaster** said if a House committee unanimously votes that a Bill Do Pass, and then follows that with a unanimous vote that the Bill be put on the House Consent Calendar, there is then a procedure in place whereby the Bill will be put on what is called a Consent Calendar in the House. What happens then is the Bill bypasses second reading and it goes directly to third reading. It is then put on the Consent Calendar order of business for at least one day. If any member of the House requests that not happen, it can be put on second

reading. It is done for Bills the Committee thinks are not controversial.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 29.7}

EXECUTIVE ACTION ON HB 115

Motion: REP. EGGERS moved **HB 115 be put on the Consent Calendar. #2**

Discussion: Reps. Adams, Shockley, Noennig to John MacMaster who advised this is House Rule 40-110. Rep. Noennig made a comment that the purpose of that procedure is to expedite Bills when they are in a time crunch. He is reluctant to enter into this procedure at this time, even though this Bill may be the appropriate one, because it gives new members an opportunity to see how the process works.

Rep. Eggers said he made the motion at this time to encourage the Committee to discuss it and how to use some protocol.

Vote: Rep. Eggers motion failed 6-12 with Reps. Laszloffy, Clark, Adams, Gutsche, Holden, Hurdle, Mangan, Noennig, Peterson, Thomas, Wolery and Younkin voting no.

Motion: REP. MANGAN moved that **HB 102 DO PASS. #3**

Discussion: Rep. Eggers, Peterson, Noennig, Clark, Hurdle, Harris, Mangan voiced concerns and opposition to this Bill. Rep. Noennig explained the law of voting on condominium problems and gave further clarification.

Vote: Motion failed 1-18 with Rep. Shockley voting yes.

Motion/Vote: Rep. Noennig moved to Table HB 102. #4 Motion carried unanimously 19-0.

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 17.7}

EXECUTIVE ACTION ON HB 156

Motion: REP. MANGAN moved that **HB 156 DO PASS. #5**

Discussion: Reps. Laszloffy, Mangan, Harris, Peterson, Noennig, Wolery, Eggers, Newman, Clancy, Clark and Shockley expressed their concerns with this Bill.

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DUANE GRIMES**, on February 1, 2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 293, SB 328, HB 115 1/29/01
Executive Action: SB 328, HB 115

HEARING ON SB 328

Sponsor: **SEN. JACK WELLS, SD 14, BOZEMAN**

Proponents: **Pam Bucy, Assistant Attorney General**

Opponents: **NONE**

Opening Statement by Sponsor:

SEN. JACK WELLS, SD 14, BOZEMAN, opened on SB 328 saying basically it was a transfer of authority and funding between the Justice Department and Executive Department in the Governor's Office. Extradition of prisoners was administered through the Governor's office, but the funding was handled through the Department of Justice. They believed it should all be done by one. The departments coordinated and decided to transfer the entire operation to the Governor's office.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, provided a handout explaining the agreement and why SB 328 should be passed, **EXHIBIT(jus26a01).**

Opponents' Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

SEN. WELLS closed on SB 328. He said it was an obvious improvement of government efficiency.

HEARING ON HB 115

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **NONE**

Opponents: **NONE**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, opened on HB 115, requested by the Law, Justice, and Indian Affairs Committee. He said the bill made it clear that if the crime itself involved a weapon, then the enhancement provisions for a weapons charge could not be used. He said it was based on a Supreme Court decision.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if this same issue came up in federal enhancement sentences for guns. **REP. SHOCKLEY** replied he wasn't sure, but he understood the Federal Courts to say if an enhancement was used in a state or federal court, there had to be a separate instruction on the enhancement. In the example of a kidnaping where a firearm was used, there would have to be jury instruction that they had to find beyond a reasonable doubt that the kidnaping took place and as a separate matter, they'd have to determine that a weapon was used. He asked if that answered the question.

SEN. O'NEIL said no, he was thinking that the federal law had weapon enhancement and was wondering about double jeopardy. **REP. SHOCKLEY** said he wasn't sure, but he thought the federal court decisions related to both federal and state law. He understood that the enhancement problem would be addressed in state court with an Attorney General's bill. He didn't know how the federal courts would use it.

SEN. DUANE GRIMES asked if this was the same section of law from last session. **REP. SHOCKLEY** said yes; it was a clarification to the bill passed.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 115.

HEARING ON SB 293

Sponsor: **SEN. STEVE DOHERTY, SD 24, GREAT FALLS**

discussed with the Society to make it more acceptable and more explicit for the journalists.

SEN. GRIMES asked about the penalty for journalists crossing the line. **Ms. Nordlund** said the penalty in the bill talked about misrepresentation of use or identity. She said the federal law had clear penalties for information used from a motor vehicle record. It created a civil cause of action by the subject of the record, including actual and punitive damages, and attorneys fees. In the federal law, the motor vehicle division that released that information contrary to the DPPA would be subject to a civil penalty of $5000 a day enforceable by the U.S. Attorney.

SEN. HOLDEN asked for specific amendments to the bill. **Ian Marquand, Society of Professional Journalists,** said he would create something.

SEN. GRIMES suggested **Valencia Lane, Legislative Staffer,** could look into the issues **SEN. O'NEIL** raised regarding how the information could be released to the public.

Closing by Sponsor:

SEN. DOHERTY closed on SB 293.

EXECUTIVE ACTION ON SB 328

Motion: **SEN. GRIMES** moved that **SB 328 DO PASS.**

Discussion:

SEN. DUANE GRIMES recapped the purpose of the bill.

Vote: **Motion carried 9-0.**

EXECUTIVE ACTION ON HB 115

Motion/Vote: **SEN. GRIMES** moved that **HB 115 BE CONCURRED IN. Motion carried 9-0. SEN. JERRY O'NEIL** would carry the bill on the Senate floor.